

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

IN RE:

LINDA S. PINTI
Debtor

Case No.: 10-20332
Chapter 7

MOTION FOR RELIEF FROM AUTOMATIC STAY

TO THE HONORABLE FRANK J. BAILEY:

Emigrant Mortgage Company, Inc. together with its successors and assigns (“Movant”), your moving party in the within Motion, respectfully represents as follows:

1. Movant is an entity with a mailing address of 5 East 42nd Street, New York, NY 10017.
2. The debtor, Linda S. Pinti (the “Debtor”), is an individual who has a mailing address of 1643 Cambridge Street, Apt # 52, Cambridge, MA 02138.
3. The Debtor is the obligor pursuant to promissory note (the “Note”) dated March 13, 2008, in the original principal amount of \$160,000.00. A copy of the Note is annexed as Exhibit “A”.
4. To secure the Note, the Debtor and Lesley R. Phillips executed in favor of, and delivered a mortgage to Emigrant Mortgage Company, Inc. (the “Mortgage”, together with the Note and any other loan documents executed in connection therewith, the “Loan Documents”) dated March 13, 2008, securing the Note and encumbering the property located at 1643 Cambridge Street, Unit 52, Cambridge, MA 02138-4357 (the “Property”). A copy of the Mortgage is annexed as Exhibit “B”.
5. There is no other collateral to secure the Note.
6. On September 22, 2010, the Debtor filed a petition under Chapter 7 of the

United States Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts.

7. As of November 30, 2010, the total amount due and owing pursuant to the Loan Documents was \$182,537.08 in principal, accrued interest, late charges, miscellaneous fees, and attorneys' fee and costs.

8. As of December 1, 2010, there is a contractual arrearage owing under the Loan Documents in the amount of \$4,295.05 inclusive of attorney's fees, cost expenses and other loan charges.

9. The regular monthly payment due at this time is approximately \$1,230.51.

10. Upon information and belief the taxes on the Property are current as Movant has been advancing funds for payment of said taxes.

11. The total amount of encumbrances on the Property is approximately \$254,053.09, which includes in addition to Movant's mortgage:

a. A lien to Cambridge House Condominium in the amount of \$71,516.01 as outlined in its Motion for Relief.

12. Movant does not have knowledge of any Declaration of Homestead recorded on the Property at the present time.

13. The Cambridge Tax Assessor lists a fair market value for the Property of \$279,400.00.

14. For purposes of this Motion only, Movant asserts that the liquidation value of the Property is \$262,086.00, calculated at the Debtor's value less a reasonable realtor's fee of 6%; and costs incurred in a real estate closing estimated to be \$550.00.

15. Movant seeks relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause on the basis that the Debtor is in default of the payment obligations

resulting in an arrearage owing under the Loan Documents and the Debtor's failure to comply with 11 U.S.C. §521.

WHEREFORE, Movant requests that the Court:

- (1) grant relief from the section 362 automatic stay and the stay imposed by Bankruptcy Rule of Procedure 4001(a)(3) for the purpose of exercising its various non-bankruptcy rights and remedies including, without limitation:
 - a. taking possession of the Property, obtaining a deed-in-lieu of foreclosure and/or foreclosing the Mortgage
 - b. taking such action as may be necessary to evict the Debtor or any occupant from the Property.
- (2) order such other and further relief as may be just and proper.

MOVANT

By Its Attorney,

/s/ Shawn M. Masterson, Esq.

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Dated: December 3, 2010

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the Motion for Relief from Automatic Stay and the proposed Order were served upon the following parties by causing true and correct copies of the same to be sent via electronic notice or via first class mail postage pre-paid, as indicated, on December 3, 2010:

Via Electronic Notice:
Office of the U.S. Trustee

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/s/ Shawn M. Masterson, Esq.